

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

KEYBANK NATIONAL ASSOCIATION,

Plaintiff,

v.

MOSES LAKE INDUSTRIES, INC.,

Defendant.

NO. CV-09-162-EFS

**ORDER GRANTING THE PARTIES'
STIPULATED MOTION FOR ENTRY OF
PROTECTIVE ORDER**

On April 2, 2010, the parties filed a Stipulation and [Proposed] Protective Order (Ct. Rec. [69](#)). Based upon the parties' Stipulation, the following protective order is **HEREBY ENTERED**:

1. Confidential Information

"Confidential Information" as used herein shall mean any information disclosed in this proceeding, whether disclosed in an interrogatory answer, during a deposition, by way of a written statement in a document, or otherwise, irrespective of who produced the information, and that relates to the following:

a. Trade secret information as defined in the Uniform Trade Secrets Act, RCW 19.108.010;

b. Proprietary and competitive business information;

1 c. Personal information where disclosure of that information
2 would violate that person's privacy; and

3 d. Financial information (including but not limited to tax
4 returns, financial statements, banking records, brokerage records and
5 electronic data containing financial information); and

6 e. Information created by third parties that is protected by
7 copyright, including information prepared by the International Swaps and
8 Derivatives Association ("ISDA").

9 A "person" shall include any natural person and, where relevant, a
10 corporation, joint stock association, or an unincorporated association.
11 The standard for determining whether a person's privacy would be violated
12 shall be based on whether disclosure of information about the person:
13 (1) would be highly offensive to a reasonable person; and (2) is not of
14 legitimate concern to the public.

15 Notwithstanding any other provision in this Protective Order, the
16 Order shall not apply to information that is publicly available.

17 2. Designating Confidential Information

18 a. Document Designations

19 A party may designate any document produced in discovery, or within
20 five business days following production, that a party believes in good
21 faith to be confidential by placing the word "CONFIDENTIAL" prominently
22 on the document. A party may also designate confidential documents by
23 identifying in writing to all counsel the Bates numbers of those
24 documents it considers confidential. Even if not designated
25 "CONFIDENTIAL" before production, parties may identify as confidential
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1 any documents produced if they have a good faith basis for such
2 designation at the time the designation is made. Any party may also, at
3 any time, designate as "CONFIDENTIAL" any documents produced by a third
4 party that the party believes, in good faith, to be confidential.

5 All documents designated as confidential documents, whether by
6 notation on the document or identification by counsel, shall hereafter
7 be referred to as "Confidential Information," and Confidential
8 Information shall not be utilized or disclosed by the receiving party,
9 its agents or its employees, or its consulting and trial experts, except
10 in accordance with the terms of this Order.

11 b. Depositions

12 To the extent any Confidential Information is disclosed in a
13 deposition, the parties agree to abide by the terms of this Order with
14 respect to any such Confidential Information, including with regard to
15 designation of testimony as Confidential Information.

16 c. Burden

17 The designating party bears the burden of demonstrating that good
18 cause exists for the document to be designated as confidential.

19 3. Reasonable Efforts

20 The parties shall use reasonable efforts to designate Confidential
21 Information only as necessary to protect their respective interests. No
22 party shall have any duty to treat any information as confidential if it
23 has not been so designated as detailed herein. If any party inadvertently
24 produces or discloses any Confidential Information without marking it
25 with the appropriate legend, that party must notify the receiving parties
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1 that the information should be treated in accordance with the terms of
2 this Protective Order. The designation will be effective upon receipt of
3 such notification and will be implemented as soon as reasonable by the
4 receiving party. Disclosure by any party of such matter before notice by
5 any party of the confidential nature thereof shall not be deemed a
6 violation of this Order.

7 Regardless of whether any information, document, transcript or other
8 thing is designated as confidential, all parties shall comply with the
9 redaction requirements of applicable Court Rules before filing any
10 document with the Court.

11 4. Persons Bound By This Order

12 The persons bound by this Order are:

- 13 a. All present parties to this proceeding;
14 b. All individuals, corporations or other entities who later
15 appear as parties to the proceeding; and
16 c. The employees, agents, and attorneys of the parties,
17 including counsel of record, experts and consultants.

18 If additional parties are brought into this litigation, they shall
19 not have access to Confidential Information before executing a copy of
20 the Stipulation and this Protective Order.

21 5. Obligations of Persons Bound By This Order

22 No person bound by this Order shall disclose Confidential
23 Information to any person other than as provided in paragraph 6 below.
24 No person bound by this Order shall use Confidential Information for any
25 purpose other than the prosecution or defense of this proceeding. The
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1 attorneys of record for the parties to this proceeding shall make the
2 terms of this Order known to all other persons bound by this Order and,
3 together with their clients, are responsible for compliance with this
4 Order.

5 6. Persons Who May Receive Confidential Information

6 The only persons to whom Confidential Information may be disclosed
7 by any party are:

8 a. Parties;

9 b. Attorneys of record for any parties to this
10 proceeding requesting discovery of the Confidential Information,
11 including the paralegal, stenographic, contract, and clerical employees
12 associated with the attorneys;

13 b. Members of any party's in-house legal staff,
14 including attorneys, paralegals and staff, who are directly involved in
15 this proceeding;

16 c. Third party experts, consultants and investigators
17 who are assisting the parties or the attorneys in this proceeding,
18 however, before disclosure of any Confidential Information, such third
19 parties shall agree to be bound by this Order;

20 d. Mediators or litigation support services, including
21 outside copying services, retained by a party for the purpose of
22 assisting that party in this action;

23 e. Any person upon the written agreement of the
24 attorneys for the parties, or upon Order of the Court;

1 f. The Court, judges and Court personnel receiving
2 pleadings or testimony related to this matter in compliance with this
3 Order;

4 g. Actual and potential lay witnesses; however, before
5 disclosure of any Confidential Information, such witnesses shall
6 agree to be bound by this Order;

7 h. Court reporters involved in taking depositions in
8 this case;

9 i. Any person who is an author, addressee, or recipient
10 of, or who previously had access to, the Confidential Information.

11 No Confidential Information may be disclosed, either directly or
12 indirectly, except by prior written approval of the parties or pursuant
13 to an order of this Court (where applicable), except to the persons
14 specified above.

15 7. Confidentiality Challenge

16 If any party to the proceeding believes that designated Confidential
17 Information should not be subject to this Order, the party may provide
18 written notification to the other party. The party providing this
19 notification shall be known as the "Challenging Party" for purposes of
20 this Order. The Challenging Party's notice shall clearly specify the
21 designated information and the reason(s) for the belief that the
22 designated information should not be treated as Confidential Information.
23 The party receiving such notice shall respond within ten (10) days of
24 receiving notice or shall be deemed to waive the confidential designation
25 of the disputed information. Following receipt of any such response, the
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1 Challenging Party shall provide further notice within ten (10) days as
2 to whether it still challenges the designation as Confidential
3 Information. Upon such further challenge, the party claiming the
4 confidential designation shall have the burden of bringing the dispute
5 before the Court. Such a motion shall be brought within fourteen (14)
6 days of receipt of the latter notification of the challenge from the
7 Challenging Party following response of the designating party. The
8 failure to timely bring such a motion shall deem the confidentiality of
9 the challenged information waived. If the motion is timely filed, the
10 designated Confidential Information shall remain subject to this Order
11 until the Court makes its determination. At the time for hearing any such
12 motion, the party seeking to maintain confidentiality shall have the
13 burden of showing that the information should be treated as Confidential
14 Information pursuant to the terms of this Order.

15 8. Confidential Information at Hearing or Trial

16 Any party that files with the Court, or seeks to use at trial,
17 Confidential Information and seeks to have the record containing such
18 information sealed, shall file such materials under seal and
19 simultaneously file a motion to seal in accordance with the applicable
20 Local Rules. The party shall request findings supporting the need for the
21 material to be maintained under seal.

22 A party that files with the Court, or seeks to use at trial,
23 Confidential Information, but does not seek to have the record containing
24 such information sealed shall cooperate with any other party in its
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1 efforts, if any, to seek to have the record sealed with respect to any
2 such Confidential Information.

3 9. Amendments of Order

4 Any party may move the court for relief from, or modification of,
5 this Order or the application of this Order. This Order may be amended
6 by the written agreement of counsel for the parties to this Stipulation
7 and any pertinent third parties in the form of a stipulation.

8 10. Duration of Order

9 This Order is intended to regulate the handling of Confidential
10 Information during the entirety of this proceeding and thereafter, and
11 shall remain in full force and effect until modified, superseded or
12 terminated by agreement of all the parties to this proceeding and any
13 pertinent third parties or by order of the Court. This Order shall become
14 effective as between the parties when executed, with or without the
15 Court's entry of same.

16 11. Return of Confidential Information

17 All Confidential Information received from another party shall be
18 returned by such party within thirty (30) days following entry of final
19 judgment or final resolution of this matter or the tolling of any appeal
20 period, whichever is longer. If a party does not demand return of the
21 Confidential Information pursuant to this paragraph, the other parties
22 may instead, after the time period has run, destroy all Confidential
23 Information in their possession and certify to the producing party that
24 all Confidential Information has been destroyed.

25 One copy of deposition transcripts, including those containing
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1 Confidential Information, may be retained by the parties subject to
2 continued handling of such transcripts in a manner consistent with
3 paragraphs 5 and 6.

4 12. Miscellaneous

5 a. The information protected by this Order is the substance
6 of the Confidential Information, no matter what form the information is
7 in and no matter how the information might be communicated.

8 b. Recipients of Confidential Information pursuant to this
9 Order shall exercise reasonable and appropriate care with regard to such
10 Confidential Information to ensure that its confidential nature is
11 maintained.

12 c. If any person in receipt of Confidential Information
13 receives any request, subpoena, or court order seeking disclosure of
14 another party's Confidential Information, such person shall notify
15 counsel for the party that produced the Confidential Information and
16 provide him or her a copy of the request, subpoena or court order. Except
17 in the case of an order requiring immediate production of the requested
18 information, no party may disclose another party's Confidential
19 Information without giving the designating party at least five (5) court
20 days to seek an order governing disclosure of the requested information.

21 d. If any party discloses Confidential Information to any
22 person other than in the manner authorized by this Order, the party
23 responsible for the disclosure shall notify counsel for all parties and
24 shall seek to recover the disclosed information and to prevent further
25 disclosure by the party and the recipient.

1 e. This Order is made to facilitate discovery and the
2 production of discoverable evidence in this action. Neither the execution
3 of this stipulated Order by the parties, the designation of any
4 information as Confidential Information under the Order, the failure to
5 make such designation, or the failure to object to such designation by
6 either party, shall constitute evidence with respect to any issue in this
7 litigation. This Order shall not abrogate or diminish any contractual,
8 statutory other legal right or obligation any party may have with respect
9 to information disclosed in this matter.

10 f. Nothing herein shall prevent a designating party from
11 using or disclosing its own Confidential Information.

12 13. The parties' Stipulated Motion for Entry of Protective Order
13 (Ct. Rec. [69](#)) is GRANTED.

14 IT IS SO ORDERED. The District Court Executive is directed to enter
15 this Order and provide copies to counsel.

16 DATED this 5th day of April 2010.

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18 S/ Edward F. Shea

19 EDWARD F. SHEA

20 United States District Judge

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